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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable David A. Evans, Constable  
Post Office Box 190333  
Mobile, Alabama 36619

Constables – Impeachment – Rules  
and Regulations – Training Programs

The oversight of constables by the Constable Regulatory Board of Mobile ("Board"), pursuant to Act 2005-95, does not include direction of day-to-day activities. The Board may adopt rules governing the conduct of constables and suspend constables for violating the rules.

Dear Mr. Evans:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Does the "oversight" of constables by the Constable Regulatory Board of Mobile, pursuant to Act 2005-95, include direction of the day-to-day activities of constables?

(2) Does the act give the Board the authority to issue policies and procedures governing the behavior and conduct of constables?

(3) Does the Board's authority to suspend a constable found "in violation of the law" apply to all state laws, court orders, and administrative regulations, or only to violations of the act?

(4) Would a constable's failure to comply with the annual training requirements of the act

constitute grounds for impeachment under section 36-11-1(b)(1) of the Code of Alabama?

### FACTS AND ANALYSIS

Act 2005-95 of the 2005 Regular Session of the Alabama Legislature provides qualifications, minimum standards, and training for constables in Mobile County and creates the Board. 2005 Ala. Acts No. 2005-95, 147. The act provides, in pertinent part, as follows:

Section 1. In Mobile County, no person shall hold the office of constable unless the person has successfully completed the minimum standards and training for peace officers pursuant to Section 36-21-46 of the Code of Alabama 1975.

Section 2. All constables shall be required to obtain a minimum of 20 hours of training per year, in addition to those requirements for constables set forth in Section 1.

Section 3. Constables not acquiring the required amount of training hours may not perform the duties of their office until the required training has been met. The Mobile County Constable Association is established to approve and provide the training of constables as required in Section 2.

Section 4. The Constable Regulatory Board of Mobile is hereby created. The board shall have *oversight* of the conduct of the constables in the county and shall resolve local complaints against the Office of Constable. The board shall have the right to suspend any constable found *in violation of the law* for a period not to exceed six months. . . . The members of the board shall provide for their own written rules of procedure. . . .

Section 5. Any constable suspended from performing the duties of his or her office under the provisions of this act is prohibited from performing any duties as a peace officer in the State

of Alabama during the term of his or her suspension and shall not be held liable for failure to perform any act required of his or her office during the term of his or her suspension.

Section 6. No constable holding office or having qualified to run for the office on the effective date of this act shall be subject to Section 1.

*Id.* at 148-49 (emphasis added).

Section 4 of the act provides that the Board shall have “oversight” of the conduct of and resolve complaints against constables. The act does not define the term “oversight.” Webster’s Third New International Dictionary defines “oversight” as “*general* supervision.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1610 (2002) (emphasis added). Therefore, it is the opinion of this Office that the Board does not have authority to direct the day-to-day activities of constables.

Section 4 further provides that the Board may adopt rules of procedure to govern its proceedings such as *Robert’s Rules of Order*. The act does not, however, expressly provide that the Board is authorized to promulgate rules and regulations to carry out its oversight responsibilities. The Alabama Supreme Court has held that the statutory authority of the Statewide Health Coordinating Council to prepare the State Health Plan conferred rulemaking authority by implication. *Ex parte Traylor Nursing Home, Inc.*, 543 So. 2d 1179 (Ala. 1988).

Moreover, this Office has considered a similar issue in the context of the county health department’s authority to investigate and report to the probate judge and county commission on a petition to establish a cemetery under section 22-20-4 of the Code of Alabama. Opinion to Honorable Lynda P. Feaga, Deputy Administrator, Elmore County Commission, dated November 1, 2002, A.G. No. 2003-023. The *Feaga* opinion concluded that, “[w]hile no specific authority is given to the county board of health to make regulations concerning the establishment of cemeteries, because the Legislature has authorized such an investigation, some standard guidelines or rules by which applications can be measured must be presumed.” *Feaga* at 4. Consistent with these authorities, because the act authorizes the Board to oversee the constables in the county, the Board has implied rulemaking authority in that regard.

Although section 4 also grants the Board the authority to suspend constables “found in violation of the law,” the act does not define “the law” that must be violated. In construction of statutes, legislative intent

may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Shelton v. Wright*, 439 So. 2d 55, 57 (Ala. 1983). Courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001).

There are three main components of the act, each of which is addressed in a separate section. Section 1 requires compliance with minimum standards and training for peace officers. Section 2 requires separate training for constables. Section 4 provides for the oversight of constables. The act expressly provides for a penalty for noncompliance with the first two parts. Section 1 prohibits the holding of office and section 3 prohibits the performance of duties until there is compliance with section 2. Significantly, the suspension language is not exclusively addressed in a separate section, but is included in the section having constable oversight as its primary object, immediately following the sentence providing for such oversight. Furthermore, as already addressed, that sentence providing for constable oversight also impliedly authorizes the Board to promulgate rules, and "administrative *law*" includes "the body of agency-made law, consisting of administrative rules, regulations. . . ." BLACK'S LAW DICTIONARY 48 (8<sup>th</sup> ed. 2004) (emphasis added). *See also, Hand v. State Dep't of Human Resources*, 548 So. 2d 171, 174 (Ala. Civ. App. 1988) ("administrative regulations have the force of law").

Therefore, it is the opinion of this Office that the suspension sentence is the penalty provision for violations of the Board's oversight authority, "the law" in the suspension sentence refers to the rules established by the Board pursuant to its authority to oversee the conduct of constables, and the Board may suspend constables in violation of those rules.

Regarding your last question, this Office has stated that it "does not issue opinions on whether a certain activity constitutes a violation of a criminal law. Only a properly empanelled jury and judge can make such a determination." Opinion to Honorable Arthur Green, Jr., District Attorney, Tenth Judicial Circuit – Bessemer Division, dated August 9, 2005, A.G. No. 2005-173 at 2; *see also*, Honorable Douglas Valeska, District Attorney, dated June 28, 1990, A.G. No. 90-00316. This Office has similarly stated that it cannot determine whether certain facts constitute grounds for impeachment of a constable. Opinion to Honorable Guy M. Sanders, Elmore County Constable, dated July 10, 2002, A.G. No. 2002-283.

CONCLUSION

The oversight of constables by the Constable Regulatory Board of Mobile, pursuant to Act 2005-95, does not include direction of day-to-day activities. The Board may adopt rules governing the conduct of constables and suspend constables for violating the rules.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB  
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